

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CASEY K. LEE,
ROBERT A. FARRIS,
BRADLEY I. COATES
and MICHAEL C. SHERMAN

Appeal No. 1998-0169
Application 08/542,603

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, and
PATE and NASE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the Examiner's refusal to allow claims 1-6 and 36 as amended after final rejection. Claims 7-29 were subject to restriction requirement and stand withdrawn from consideration. Claims 30-35 have been canceled. These

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are all the claims in the application.

The claimed invention is directed to an orthopedic internal fixation system for maintaining bones in a desired spatial arrangement and includes a bone implant or plate for supporting the bones. Attaching the bone implant to the bone is an elongated stud which has a foot that is receivable in the interior of the bone and a fastener that holds the implant to the stud.

The claimed invention can be further understood with reference to the appealed claims appended to the appellants' brief.

The references of record relied upon by the examiner as evidence of anticipation and obviousness are:

Abbate	4,850,063	July 25,
1989		
Steffee	4,854,311	Aug. 8,
1989		

THE REJECTIONS

Claims 1, 2, 4-6 and 36 stand rejected under 35 U.S.C. § 102(b) as anticipated by Abbate.

Claim 3 stands rejected under 35 U.S.C. § 103 as being

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unpatentable over Abbate in view of Steffee.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have determined that the applied prior art does not establish a prima facie case of anticipation or obviousness with respect to the claimed subject matter. Accordingly, we will reverse the rejections of the claims on appeal.

It is our finding that Abbate discloses a fastener for fastening a water closet or toilet to the closet flange attached to the floor in a bathroom. The fastener of Abbate has a first elongated stud portion with a foot portion rigidly attached thereto and discloses using a fastener on the threaded part of the stud portion. In this respect, our findings are in congruence with the findings of the examiner. However, the examiner makes the further finding that the ring-shaped closet flange 4 of Abbate could be used as a bone implant. Examiner's Answer at 4, line 1. The examiner has included no evidence or a convincing line of reasoning to support this factual finding. Since it is not readily

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apparent that this is the case, we are

constrained to hold that the examiner has not satisfied his burden of establishing that Abbate discloses each and every feature of the claimed subject matter either expressly or inherently. For this reason, we reverse the rejection of claims 1, 2, 4-6 and 36.

Likewise, with respect to claim 3 rejected under the provision of 35 U.S.C. § 103, the examiner has not established that the combination of references of Abbate and Steffee would have disclosed the structure of a bone implant or a plate that could inherently have functioned as a bone implant. Therefore, we are constrained to reverse the rejection of claim 3 on obviousness grounds.

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The rejection of all claims on appeal has been reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
WILLIAM F. PATE, III)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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